(1) (10)

IN THE HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench

MISC. Civil Case **NO:** 148 **/2004**

APPLICANT : **M/s SHYAM LAL AGRAWAL,**
Engineers & Builders,
"ANAND" Station Road, Raigarh
Through its Partner Shri Shyamlal Agrawal,
Raigarh, Distt: Raigarh (CG)

-Vs-

RESPONDENTS

01. **The Chairman cum Managing Director**
South Eastern Coalfields Limited,
Seepat Road, PO: SECL, Bilaspur (CG)

02. The General Manager (Civil),
South Eastern Coalfields Limited,
Seepat Road, PO: SECL, Bilaspur (CG)

03. The Chief General Manager,
South Eastern Coalfields Limited,
Gevra Area, PO: Gevra Colliery,
Distt: Korba (CG)

P.R. No. 2627 dt 9
Presented by Shri Sanjay Kumar Agrawal
dated 9-11-04

APPLICATION UNDER SECTION 11 (6) OF THE ARBITRATION AND CONCILIATION ACT, 1996, FOR APPOINTMENT OF SOLE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.C.C. 148/04 सन् 200—

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	16/03/2005 Shri Sanjay K.Agrawal and Shri Rakesh Jha, learned counsel for the applicant. Dr.N.K.Shukla with Shri Shailendra Shukla, learned counsel for the respondents. The application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short ' the Act') has come up before me on being designated for appointing an arbitrator, by the Hon'ble Chief Justice of Chhattisgarh High Court. It is submitted by the petitioner/applicant that the parties to the proceedings entered into a contract agreement dated 02nd June 1998 for construction of 5000 Tonnes Capacity Grade Bunker for Capacity Augmentation of Gevra Open Cast, C.H.P. Gevra which was corrected by letter dated 30th July 1998 and the completion period for the said work was specified to be eighteen months. As per Clause 14 (2) of the Civil Engineering Manual, 1995, any dispute arising out of the contract agreement is to be referred to a sole arbitrator for arbitration. The arbitrator is to be appointed by the Chairman-cum-Managing Director of the Company or any other person authorized by him, to appoint such arbitrator. Learned counsel for the petitioner/applicant submits that the dispute arose out of the agreement between the parties and the applicant, after failing to receive any response from the aforesaid executing authority, requested the Chairman-cum-Managing Director, respondent No.1 to appoint a sole arbitrator to adjudicate upon the dispute within a period of thirty days in accordance with the provisions of Act, vide letter dated 11.10.2004 of Annexure P/14. However, respondent No.1 has failed to exercise the power entrusted to him and has not found time to appoint a sole arbitrator within the notice period of 30 days.	

(पीछे देखिये)

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आदेश पत्रक

मामला क्रमांक M.C.C.148 **सन्** 2004

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In reply to the above application, non-applicant objected to the maintainability of this application on the following grounds;

1) That the agreement in question does not contain arbitration clause and therefore in absence of the arbitration clause, this application under the Act is not maintainable.

2) That the firm of the applicant is not a registered firm and as such not a legal entity and at the behest of unregistered partnership firm, the disputes cannot be referred to an arbitrator.

On the other hand, learned counsel for the applicant submits that the firm is a registered partnership firm and in proof of the same, a certificate of registration of partnership firm has been filed today.

Learned counsel for the applicant relying upon the judgment in the matter of ***Pyrites, Phosphates and Chemicals Ltd.*** reported in ***2002 Arb.W.L.J.619*** submits that the Civil Engineering Manua of the respondent No.1 contains arbitration clause and as per Clause 14(2) of the same, dispute arising between them out of an agreement, is to be resolved through arbitration.

Learned counsel for the applicant further relying upon the judgment reported in ***(2003) 6 SCC, 564*** in the matter of ***Food Corporation of India Vs. Indian Council of Arbitration and others*** submits that all the contentious issues raised by the parties, are to be decided by the arbitrator under Section 16 of the Act and the legislative intent underlying the Act is to minimize the supervisory role of the courts in the arbitral process and quick nomination/appointment of arbitrator, leaving all contentious issued to be decided by him.

Considering all the facts and circumstances and the contentions raised by the respective parties, it is to be noted that it is not one of those clear-cut cases

(पीछे देखिये)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.C.C. 148 सन् 2007

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

as contended, in which it could be said that there is no contract at all between the parties, on the face of it. The matter is such that it may require probe and enquiry into the objections raised by the respondent and it is only feasible and appropriate that the arbitrator himself may embark upon any such enquiry in case any objection or issue is raised by the respondents before the arbitrator regarding existence of an agreement between the parties as well as registration of the firm.

As a result the application is allowed and a case for appointment of an arbitrator is held to be made out.

During the course of the arguments, learned counsel for the respondent submitted that as per Clause 14 (2) of the Civil Engineering Manual, CMD of the respondent is entrusted with power to nominate arbitrator for adjudication of the dispute.

However, learned counsel for the applicant disputes this on the ground that respondent No.1 did not exercise the above right and his request of appointment of the arbitrator was not decided within a period of one months and therefore, authorizing the CMD to appoint arbitrator again is not called for.

While reserving the order, after conclusion of the arguments, I had asked learned counsel for the parties, that in case it would be found that an arbitrator is to be nominated, would it be possible to indicate any name to which both may agree. Learned counsel for both the parties responded that any Hon'ble retired Judge of this High Court may be appointed arbitrator and they do not have any objection.

I hereby, therefore, appoint Mr.Justice P.C.Naik, former Judge of High Court of Chhattisgarh, C/o Shri T.C.Naik, Advocate, 238/15, Napier Town,

(पीछे देखिये)

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आदेश पत्रक

मामला क्रमांक M.C.C/148 **सन्** 2004

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Jabalpur, M.P. 482001, Ph. No. 0761 2450388, as arbitrator, in exercise of power under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

The Hon'ble Arbitrator may settle his terms and conditions and remuneration.

Registry to intimate Hon'ble Mr.Justice P.C.Naik, former Judge of High Court of Chhattisgarh, about his appointment as Arbitrator and to send all the papers along with address of the parties.

Parties are also directed to approach Hon'ble Mr.Justice P.C.Naik, who is presently residing at Jabalpur and to submit papers and to take part in the arbitration proceedings.

Sd/-
Dhirendra Mishra
Judge

(पीछे देखिये)